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## Home Rule

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## HOME RULE

*N.Y. CONST. art. IX, § 2(c):*

*In addition to powers granted in the statute of local governments or in any other law, (i) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to its property, affairs or government and, (ii) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to the following subjects, whether or not they relate to the property, affairs or government of such local government . . . .*

*U.S. CONST. art. VI:*

*This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.*

## COURT OF APPEALS

People v. Speakerkits, Inc.<sup>1</sup>  
(decided March 17, 1994)

The defendants claimed that despite the authority given to localities to regulate the highways “within their boundaries”<sup>2</sup> under the State Constitution’s Municipal Home Rule, the Village

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1. 83 N.Y.2d 814, 633 N.E.2d 1092, 611 N.Y.S.2d 488 (1994).

2. See N.Y. CONST. art. IX, § 2(c)(ii)(6); N.Y. MUN. HOME RULE LAW § 10 (McKinney 1994); N.Y. VEH. & TRAF. LAW § 1604 (McKinney 1995).

of Bellerose could not adopt a local law which imposed resident-based restrictions on the use of public streets.<sup>3</sup> The court of appeals affirmed the decision of the appellate term, and held that Bellerose Village Code, section 204-19(B), which restricts the use of public highways, was inconsistent with the general law of the State of New York.<sup>4</sup> In addition, the court of appeals reasoned that the law is not a valid exercise of the village's "police power."<sup>5</sup>

The defendants' motion to dismiss was granted by the appellate term, thereby overturning the holding of the village court. Agreeing with the appellate term, the court of appeals held that section 204-19(B) is overtly discriminatory and, thus, is an improper exercise of police power.<sup>6</sup> The court noted that "local governments may not exercise their police power by adopting a law inconsistent with the Constitution or any general law of the state."<sup>7</sup>

In *Speakerkits*, two non-resident defendants parked their vehicles in an unmetered residential area on numerous occasions.<sup>8</sup> As a result, they were charged with violating section 204-19(B) of the Bellerose Village Code.<sup>9</sup> The village justice court imposed fines in the amounts of \$1,410 and \$2,280.<sup>10</sup>

3. *Speakerkits*, 83 N.Y.2d at 815, 633 N.E.2d at 1093, 611 N.Y.S.2d at 489.

4. *Id.* at 815, 633 N.E.2d at 1093-94, 611 N.Y.S.2d at 489-90.

5. *Id.* at 815, 633 N.E.2d at 1094, 611 N.Y.S.2d at 490. The Village argued that the law provided a "valid ground" to question the occupants of suspicious vehicles parked on the streets. *Id.*

6. *Id.*

7. *Id.* at 815, 633 N.E.2d at 1093, 611 N.Y.S.2d at 489.

8. *Id.*

9. BELLEROSE VILLAGE CODE § 204-19(B). Section 294-19(a) provides: "[N]o vehicle shall be parked in the residential area . . . unless such vehicles shall bear a permit issued by the Village Clerk . . . known as the residential parking permit." *Id.*

10. *Speakerkits*, 83 N.Y.2d at 815, 633 N.E.2d at 1093, 611 N.Y.S.2d at 489. One defendant had received 47 summonses, and the other defendant received 76 summonses. *Id.* One summons was received for each violation of Section 204-19 (B) of the Bellerose Village Code. *Id.*

The court of appeals relied upon *New York State Public Employees Federation v. City of Albany*<sup>11</sup> to assert its position that the local law was discriminatory.<sup>12</sup> The court in *City of Albany* held that although localities may regulate their own highways, this ability is limited in that the legislature “retains ultimate control over the highways . . . throughout the state.”<sup>13</sup> The State Legislature has such control due to its interest in maintaining “uniform highway regulation throughout the state.”<sup>14</sup>

In *City of Albany*, the plaintiffs successfully challenged the validity of a local law which allowed residents of Albany who purchased permits to park in their neighborhoods for unlimited duration, but restricted non-resident parking in such areas during weekday business hours to ninety minutes.<sup>15</sup> The ordinance was found to discriminate against non-residents and was deemed “ultra vires and void.”<sup>16</sup> The *City of Albany* court pointed to *People v. Kerr*,<sup>17</sup> and noted that “[t]he right to use of the highways is said to rest with the whole people of the state, not with the adjacent proprietors or the inhabitants of the surrounding municipality.”<sup>18</sup>

The court in *City of Albany* also relied on *People v. Grant*<sup>19</sup> in which the court struck down a local law which prohibited non-residential traffic in the Village of New Hyde Park.<sup>20</sup> The *Grant* court held that “residents of a particular area . . . do not possess and cannot be granted proprietary rights to the use of the highways therein in priority to or exclusive of use by the general

11. 72 N.Y.2d 96, 527 N.E.2d 253, 531 N.Y.S.2d 770 (1988).

12. *Speakerkits*, 83 N.Y.2d at 816, 633 N.E.2d at 1093, 611 N.Y.S.2d at 489.

13. *City of Albany*, 72 N.Y.2d at 100, 527 N.E.2d at 255, 531 N.Y.S.2d at 772.

14. *Id.*

15. *Id.* at 99, 527 N.E.2d at 254, 531 N.Y.S.2d at 771.

16. *Id.* at 99-100, 527 N.E.2d at 254, 531 N.Y.S.2d at 771.

17. 27 N.Y. 188 (1863).

18. *Id.* at 199.

19. 306 N.Y. 258, 117 N.E.2d 542 (1954).

20. *Id.* at 262, 117 N.E.2d at 544.

public."<sup>21</sup> The rule in this area is clear: local residents have no greater right to use the highways neighboring their town than non-residents.<sup>22</sup>

In *Speakerkits*, the court of appeals found that the ban on non-resident parking on public streets in the Bellerose residential district was even "more restrictive than the ordinance . . . found patently discriminatory in *City of Albany*."<sup>23</sup> Hence, the court of appeals explained that if the law in *City of Albany* was struck down, so must the law in *Speakerkits*.<sup>24</sup>

The *Speakerkits* court also employed the reasoning of the court in *Jancyn Manufacturing Corp. v. Suffolk County*<sup>25</sup> in holding that the ordinance in question did not constitute a valid exercise of the Village's police power. In *Jancyn Manufacturing*, a manufacturer of a cesspool cleaning product sought to have a local ordinance deemed null and void.<sup>26</sup> However, the court of appeals stated that the "county ordinance prohibiting sale of cesspool additives without prior approval by [the] county commissioner was not preempted by state statute."<sup>27</sup> Consequently, there was no conflict between the local and state law. The court of appeals held that "local governments may not

21. *Id.* See *People v Randazzo*, 60 N.Y.2d 952, 459 N.E.2d 161, 471 N.Y.S.2d 52 (1983) (discussing the validity of a local ordinance that prohibits traveling in a certain direction after proscribed hours); *Wiggins v. Town of Somers*, 4 N.Y.2d 215, 149 N.E.2d 869, 173 N.Y.S.2d 579 (1958) (challenging a town ordinance that prohibits the transportation or dumping of garbage in the Town of Somers which did not originate in the town); *Atlantic Beach Prop. Owners Ass'n v. Town of Hempstead*, 3 N.Y.2d 434, 144 N.E.2d 409, 165 N.Y.S.2d 737 (1957) (ruling on a local ordinance that charges persons who reside outside the Town of Hempstead, but not town residents, for the use of the town park).

22. *City of Albany*, 72 N.Y.2d at 102, 527 N.E.2d at 256, 531 N.Y.S.2d at 773.

23. *Speakerkits*, 83 N.Y.2d at 816, 633 N.E.2d at 1093, 611 N.Y.S.2d at 489.

24. *Id.*

25. 71 N.Y.2d 91, 518 N.E.2d 903, 524 N.Y.S.2d 8 (1987).

26. *Id.* at 92, 518 N.E.2d at 904, 524 N.Y.S.2d at 9.

27. *Id.* at 100, 518 N.E.2d at 907, 5 N.Y.S.2d at 12-13.

exercise their police power by adopting a law inconsistent with the Constitution or any general law of the state.”<sup>28</sup>

In *New York State Club Ass’n Inc. v. City of New York*,<sup>29</sup> the court of appeals upheld a local ordinance which prohibits discrimination in private “clubs” that provide benefits to persons other than their own members.<sup>30</sup> The purpose of this law is to give everyone a “fair and equal opportunity to participate in the business and professional life in the city.”<sup>31</sup> Thus, this law, unlike the law in *Speakerkits*, was upheld as a valid exercise of the police power of New York State as a means to protect public welfare.

Applying this precedent, the court of appeals in *Speakerkits* found that the local law at issue was inconsistent with section 1604<sup>32</sup> of the Vehicle and Traffic Law.<sup>33</sup> The aforementioned laws disallow local governments from limiting the free use of public highways except to the extent expressly authorized by statute.<sup>34</sup>

In conclusion, Bellerose Village Code, section 204-19(B) was rejected in *Speakerkits* on three grounds. First, it was too restrictive due to the ban on nonresident parking and, thus, discriminatory. Second, it was inconsistent with the Vehicle and Traffic Law of the State of New York which prevents towns from excluding persons from the free use of the highways. Last, a local law which imposes residency-based restrictions is

28. *Id.* at 96, 518 N.E.2d at 905, 524 N.Y.S.2d at 10.

29. 69 N.Y.2d 211, 505 N.E.2d 915, 513 N.Y.S.2d 349 (1987).

30. *Id.* at 215, 505 N.E.2d at 916, 513 N.Y.S.2d at 350.

31. *Id.* at 216, 505 N.E.2d at 916, 513 N.Y.S.2d at 350.

32. N.Y. VEH. & TRAF. LAW § 1604 (McKinney 1995). Section 1604 of the Vehicle and Traffic Law provides in pertinent part:

[L]ocal authorities shall have no power to pass, enforce, or maintain any ordinance, rule or regulation requiring from any owner of a motor vehicle . . . any tax, fee, license or permit for the use of the public highways, or excluding any such owner, operator or chauffeur from the free use of such public highways . . . .

*Id.*

33. *Speakerkits*, 83 N.Y.2d at 815, 633 N.E.2d at 1093, 611 N.Y.S.2d at 489.

34. *Id.*

prohibited, because it is not an acceptable exercise of the village's "supersession authority" as contained in section 10 of the Municipal Home Rule law.<sup>35</sup>

## SUPREME COURT, APPELLATE DIVISION

### THIRD DEPARTMENT

Salvador v. State<sup>36</sup>  
(decided November 3, 1994)

Plaintiffs sought declaratory judgment in alleging that the Laws of 1987, chapter 617,<sup>37</sup> the Laws of 1979, chapter 599,<sup>38</sup> and the 1987 amendment to Environmental Conservation Law [hereinafter ECL] section 17-1709(3)<sup>39</sup> were promulgated in violation of their right to self government pursuant to the home rule provisions of New York Constitution, article IX.<sup>40</sup> The

35. N.Y. MUN. HOME RULE LAW § 10 (McKinney 1994).

36. 205 A.D.2d 194, 618 N.Y.S.2d 142 (3d Dep't 1994).

37. 1987 N.Y. Laws 617. Chapter 617 states in pertinent part throughout that the Lake George Park Commission has the ability to contract for, establish, and maintain facilities and utilize various lands and parks as well as amend, adopt, and repeal numerous rules and regulations relating to environmental conservation.

38. 1979 N.Y. Laws 599. Chapter 599 states:

The discharge of sewage or treated sewage effluent from any public sewerage system, owned, maintained or operated by a municipality or public authority, into the drainage basin of Lake George is hereby prohibited . . . [f]or the purposes of this subdivision, discharge shall include sewerage or treated sewage effluent entering or within the drainage basin of Lake George through runoff, seepage, percolation, spray irrigation and ground and spring water flow.

*Id.*

39. 1987 N.Y. Laws 617, § 10 (current version at N.Y. ENVTL. CONSERV. LAW § 17-1709(3) (McKinney 1995)).

40. N.Y. CONST. art. IX, § 2 (c). Section 2 (c) states in relevant part: In addition to powers granted in the statute of local governments or in any other law, (i) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this